

EXHIBIT "B"

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF OHIO

3 **COPY**

4
5 - - - - - x
6 MAFCOTE, INC. :
7 :
8 Plaintiff, :
9 vs. : CASE NO.:
10 : 1:04-CV-853
11 :
12 GENATT ASSOCIATES, INC. :
13 :
14 Defendant. :
15 - - - - - x

16 Deposition of STEPHEN SCHULMAN, taken
17 pursuant to the Federal Rules of Civil Procedure,
18 before Melissa J. Kelly, RMR, CRR, Licensed
19 Shorthand Reporter #00307, and Notary Public within
20 and for the State of Connecticut, held at Mafcote,
21 Inc., 108 Main Street, Norwalk, Connecticut, on
22 September 18, 2006, at 9:36 a.m.

23 DEL VECCHIO REPORTING SERVICES, LLC
24 PROFESSIONAL SHORTHAND REPORTERS
25 117 RANDI DRIVE
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1 and are not repeating documents.

2 MR. WALULIK: We'll go off the record
3 for a second.

4 MR. GREER: Does that make sense?

5 MR. MINDLIN: Yeah. That's fine.

6 (Off the record.)

7 MR. WALULIK: Before we went off the
8 record, Mr. Greer was talking about a
9 stipulation. I just want to make sure we've
10 got on the record that everyone agrees to the
11 stipulation he proposed. I do on behalf of
12 Genatt.

13 MR. MINDLIN: So agreed.

14 MR. WALULIK: The third stipulation
15 that we had talked about is a choice of law
16 stipulation. When Mafcote litigated the
17 underlying insurance coverage case against
18 Continental, they briefed the issues under
19 Ohio law. We would ask that the tort claims
20 also be governed by Ohio law in this action.
21 And Mr. Greer --

22 MR. GREER: We'd stipulate to that.

23 MR. WALULIK: And I think Mr. Mindlin,
24 I'll let you speak.

25 MR. MINDLIN: Yes. I had not heard of

1 this issue until walking into the room within
2 the last five minutes and I was not -- have
3 not had a chance to consider it. So at this
4 time I'm going to neither accept or refuse
5 the stipulation. I'm just going to hold it
6 in abeyance until I've had a chance to think
7 about it.

8 MR. WALULIK: So we're clear, the
9 stipulation will be between Genatt Associates
10 and Mafcote with Continental reserving its
11 decision on whether to join.

12 The last stipulation we talked about is
13 a withdrawal of a couple of counts from the
14 complaint and, Jamie, I'll let you speak.

15 MR. GREER: That's right. There are
16 certain counts in the complaint and in
17 reading the complaint will speak for
18 themselves. But they deal with the 2004, the
19 2005 policy when this complaint was written
20 and filed, that was a policy that was out
21 there. That policy has since expired. There
22 have been no claims made under that policy,
23 so there is no damage stemming from it. So
24 we would withdraw our claims in relation to
25 that policy so that we can focus in on the

1 2001 claim which is the subject matter of the
2 deposition.

3 MR. WALULIK: And so the matter is
4 clear, you're withdrawing Counts 7 and 8 from
5 the complaint?

6 MR. GREER: I believe. Can I just take
7 a look at it quick? I believe that's
8 correct, David, but I don't want to agree too
9 fast.

10 Yes to both 7 and 8.

11 MR. WALULIK: Great. I think we can
12 get started.

13 BY MR. WALULIK:

14 Q. I'm going to show you a couple of
15 exhibits --

16 MR. MINDLIN: Before you do, just off
17 the record.

18 (Off the record.)

19 MR. MINDLIN: Just, I think the
20 reporter said something about waiving the
21 signing and filing of the deposition
22 transcript which is one of the usual federal
23 stipulations at depositions. The other that
24 I'm familiar with is that all objections
25 except as to form are reserved until trial so

1 A. Miles is our CFO. I believe that he dealt
2 with Nick Bozovich when accounting questions came
3 up such as overhead and deductibles, deductions,
4 calculation deductibility. He could have, but I
5 don't recall him particularly examining the claim.

6 Q. When you say examine the claim, what types
7 of activities are you talking about?

8 A. I'm talking about looking at and reviewing
9 the claims that were made to CNA.

10 Q. Who made the decision to have Royal
11 Consumer Products go out and purchase product on
12 the open market from third parties?

13 A. I think it was a decision made by Richard
14 Repocki and myself.

15 MR. GREER: Can I get that name? I'm
16 sorry.

17 THE WITNESS: Richard Repocki and
18 myself.

19 BY MR. WALULIK:

20 Q. And who is Richard Repocki?

21 A. He's a general manager of Royal Consumer
22 Products.

23 Q. Does he work out of this office?

24 A. Yes.

25 Q. Did he work out of this office in July and

1 August of 2001?

2 A. Yes.

3 Q. When was the decision made, if you recall?

4 A. Sometime around July 16th or July 17th or
5 July 18th.

6 Q. So if -- this boiler accident happened on
7 July 16th, correct? So between the 16th and the
8 18th the decision was made for Royal Consumer
9 Products to go out and purchase products on the
10 open market?

11 A. The decision was made to start probably on
12 July 16th.

13 Q. Okay. What is Bob Kaminsky's relationship
14 to this lawsuit?

15 A. Bob was the plant manager of -- or plant
16 engineer, I forget which, of the Franklin plant of
17 Miami Valley Paper.

18 Q. What would his job responsibilities have
19 been at that plant?

20 A. To run the plant.

21 Q. He was responsible for production?

22 A. Yes.

23 Q. When did Mr. Kaminsky cease employment with
24 Mafcote?

25 A. I'm not sure.

1 A. Correct.

2 Q. And you held those positions during 2001?

3 A. Correct.

4 Q. You've been president of Mafcote since
5 1988, right?

6 A. Correct.

7 Q. And you've been employed by Mafcote since
8 1968?

9 A. Correct.

10 Q. What's your educational background?

11 A. I have a degree from University of
12 Pennsylvania in business administration and a
13 master's degree in business administration from
14 Columbia.

15 Q. So your undergraduate, is it a bachelor of
16 arts?

17 A. BA.

18 Q. And your Columbia degree is an MBA?

19 A. MBA. Actually, it's a BS, bachelor of
20 science. Undergraduate is a BS.

21 Q. Do you have any particular special
22 education that you studied or was it just a general
23 MBA?

24 A. MBA was, I think, marketing. I'm not
25 positive.

1 THE WITNESS: The other part of the
2 situation is that during the time that the
3 carrier is responsible for the loss, the
4 carrier does the same thing, makes
5 recommendations about the risk and the same
6 process occurs.

7 BY MR. WALULIK:

8 Q. How many employees does Mafcote have?

9 A. About 400.

10 Q. And those 400 employees, do those include
11 employees of affiliates?

12 A. Uh-huh.

13 MR. GREER: You need to say "yes"
14 instead of "uh-huh."

15 THE WITNESS: Yes.

16 BY MR. WALULIK:

17 Q. Do you have any rough idea as to how many
18 affiliates Mafcote has?

19 A. We have four major affiliates, and then
20 those affiliates have affiliates.

21 Q. What are the four major affiliates?

22 A. FC Meyer, Miami Wabash Paper, Royal
23 Consumer Products, Mafcote International.

24 Q. What lines of business is Mafcote
25 International responsible for?

1 A. Mainly consumer products.

2 Q. What does it do?

3 A. It operates affiliates.

4 Q. How many affiliates?

5 A. When?

6 Q. Presently -- from July 2001 to the present?

7 A. July 2001, I don't believe we had any, but
8 I'm not sure.

9 Q. How about the present?

10 A. Present we have three affiliates.

11 Q. What are those three Mafcote International
12 affiliates?

13 A. Geographics Australia, EE Mafcote SRL and
14 Geographic Europe.

15 Q. And when you say "Geographic Australia,"
16 that's an entity that operates in Australia?

17 A. Correct.

18 Q. Geographic Europe is an entity that
19 operates in Europe?

20 A. Correct.

21 Q. The EE Mafcote, where does that entity
22 operate?

23 A. Romania.

24 Q. And how many countries does GE -- Mafcote
25 Europe operate in?

1 Q. What are his responsibilities presently?

2 A. General manager of Miami Valley.

3 Q. Since you joined the company in 1964, has
4 Mafcote and the Mafcote affiliates always carried
5 boiler insurance?

6 A. To my knowledge.

7 Q. When did you first become familiar with
8 boiler insurance as carried by Mafcote or the
9 Mafcote affiliates?

10 A. I don't know. Maybe soon after I joined
11 the company, but I'm not quite sure when.

12 Q. When did you begin to assume responsibility
13 for seeing that proper insurance was procured?

14 A. I think shortly after joining.

15 Q. So you've had involvement with procurement
16 of boiler insurance on behalf of Mafcote and the
17 Mafcote affiliates since the 1960s?

18 A. Well, if not the '60s the '70s.

19 Q. And are your policies typically subject to
20 a one- or three-year policy term, roughly?

21 A. Typically.

22 Q. So you've had at least 10 to 20 different
23 renewals during the time you've had that
24 responsibility?

25 A. It could be.

1 Q. Does that sound right?

2 A. It could possibly be. I haven't counted
3 them so I can't tell you.

4 Q. How many different insurers has Mafcote had
5 over that time? Can you give me a rough guess?

6 A. I cannot.

7 Q. How many insurance brokers have you had
8 over that time?

9 A. Perhaps five.

10 Q. Who are those brokers?

11 A. I think that -- the first one I can recall
12 is Cobdin and Associates.

13 Q. How do you spell that?

14 A. C-o-b-d-i-n and Associates. The second one
15 was Sterling & Sterling. The third was Dan
16 Mozoratto.

17 MR. GREER: Spell that, too.

18 THE WITNESS: I could not. I'm not
19 going to try Dan Mozoratto.

20 Fourth one was Acordia. The fifth one
21 was Genatt.

22 BY MR. WALULIK:

23 Q. Have you considered who you're going to use
24 for your boiler coverage for the next year?

25 A. Well, I -- what does that mean? Is that

1 THE WITNESS: That's fine.

2 MR. WALULIK: Okay. Great.

3 BY MR. WALULIK:

4 Q. If you can take a look at Count 2, that's a
5 breach of fiduciary duty claim.

6 Do you understand what a fiduciary is?

7 A. Yes.

8 Q. What's your understanding of a fiduciary?

9 A. My understanding is that a fiduciary
10 obligation is an obligation by a party to another
11 party to act on the -- on behalf of the second
12 party in a manner which is forthright and honest to
13 the party that they're acting for.

14 Q. Did Mafcote retain the right to refuse to
15 enter an insurance contract recommended by Genatt
16 Associates?

17 A. Yes.

18 Q. So the final decision as to whether to
19 purchase the policy was Mafcote's?

20 A. Correct.

21 Q. Did Genatt have any authority to bind
22 coverage for Mafcote without your consent?

23 A. No.

24 Q. Count 4 begins at Paragraph 46. It's
25 titled "Breach Of Duty of Good Faith and Fair

1 A. Correct.

2 Q. And same thing with Count 6 which is a
3 statutory count under Ohio law. The representation
4 would be that there is coverage under the policy?

5 A. Correct.

6 MR. WALULIK: I think now is a good
7 time to take a break for lunch if you want
8 to.

9 (Whereupon a lunch recess was taken.)

10 MR. WALULIK: If you can go ahead and
11 mark this 12.

12 (Joint Exhibit No. 12: Marked for
13 identification.)

14 BY MR. WALULIK:

15 Q. Mr. Schulman, the reporter has just handed
16 you what has been marked Exhibit 12. This is a
17 Contingent Business Interruption insurance form
18 from CNA?

19 A. Yes.

20 Q. You testified previously that the
21 negligence and other claims that you assert against
22 Genatt are based in part upon the failure to obtain
23 a contingent business interruption coverage.

24 Is this the form that Mafcote contends
25 should have been obtained?

1 MR. MINDLIN: By "you" do you mean
2 Mr. Schulman?

3 MR. WALULIK: Correct.

4 THE WITNESS: No.

5 BY MR. WALULIK:

6 Q. When was the first notice you received?

7 A. Well, I received notice on 7/16 or
8 thereabout that they couldn't run the steam foil
9 and from that point through 8/13/01, I had received
10 a stream of other reports. In order for me to give
11 you a more accurate answer, I'd have to review all
12 of the letters and files to tell you exactly when I
13 understood what.

14 Q. Continuing with the fax from Bob Kaminsky
15 to yourself, number 1 says that the boiler ruptured
16 on 7/26/01.

17 That date is in fact incorrect?

18 A. Correct. That date is incorrect.

19 Q. The 7/26/01 date, does that refresh your
20 memory as to when the problem was diagnosed?

21 A. Well, the problem might have been -- it
22 doesn't really. All I know is that on
23 7/16/06 -- '01, I should say, I knew that the steam
24 foil was inoperative. And at some point between
25 then and whatever the correspondence indicates they

1 traced the failure to the boiler and then
2 ultimately to a boiler rupture but I cannot tell
3 you when exactly what was known when at this
4 moment.

5 Q. Genatt Associates reported the claim to
6 Continental on August 14, 2001, correct?

7 A. I don't know. You'd have to show me data
8 that --

9 MR. GREER: That was the last
10 correspondence you showed him that relates to
11 that.

12 BY MR. WALULIK:

13 Q. The August 14, 2001 letter from Ed DiGioia
14 to yourself states that you are suffering business
15 interruptions, could default on about a million
16 dollars in sales.

17 To whom were you in danger of defaulting?

18 A. Well, we had numerous customers who
19 required delivery on time and to those customers we
20 would default.

21 Q. This fax was sent, it appears, on August
22 14th at 11:42 a.m.; is that correct?

23 A. Yes.

24 Q. Is this the first written notice that
25 Mafcote provided to Genatt Associates about this

1 product already?

2 A. Yes. There may have been purchases after
3 that date but certainly before that date.

4 Q. And were the purchases after that date
5 confirmed by CNA?

6 A. No.

7 MR. WALULIK: Let's mark these 19.

8 (Joint Exhibit No. 19: Marked for
9 identification.)

10 BY MR. WALULIK:

11 Q. Going back to Exhibit 18 if we could for
12 just one second, is it Genatt's contention or,
13 excuse me, is it Mafcote's contention that Genatt
14 breached any duty in failing to inform you about
15 purchases of stock, replacement product?

16 A. Our position is that they helped us prepare
17 the claim. The claim was denied by CNA. If
18 there's any responsibility for the preparation of
19 the claim and its failure to have CNA respond
20 properly, it lies with Genatt.

21 Q. Okay. And I understand your previous
22 response. My question is just a little different.
23 I'm just trying to determine who made the decision.

24 Genatt never told you to go out and
25 purchase third party product, correct?

1 Q. From August 13th to August 15th the only
2 customer of the Franklin affiliate that cancelled
3 an order was Royal Consumer Products, correct?

4 A. Correct.

5 Q. If you take a look at the first page of
6 this exhibit, the August 29th letter from yourself,
7 the second paragraph states that, "On July 27,
8 2001, Mr. Kaminsky contacted Hartford Steam."

9 Does that refresh your recollection as to
10 the dates that Mr. Kaminsky reported the claim to
11 Hartford Steam?

12 A. Yes.

13 Q. And your understanding is that that date is
14 correct?

15 A. Correct.

16 Q. Initially did you or Mafcote believe that
17 Continental bore some negligence on its own part
18 for failing to inspect this boiler?

19 A. Correct.

20 Q. Is it your belief that had Continental
21 inspected this boiler since Hartford Steam last
22 inspected it, that this claim would have been
23 reported correctly?

24 A. Yes. I believe that we would have reported
25 it to the right carrier.

1 A. I'm sure. I have to find out what we were
2 doing during this time period to remedy the problem
3 of the lack of steam foil and I, just in the normal
4 course of business, it would have been reported
5 that they are -- that Franklin is trying to see how
6 to repair the boiler and that one of the options is
7 to replace it.

8 Q. Are there daily communications from the
9 home office in Connecticut with the field affiliate
10 in Ohio?

11 A. Yes.

12 Q. So is it fair to say that certainly the
13 people here in the home office in Norwalk knew that
14 the boiler wasn't functioning as of August 9th when
15 this estimate was obtained?

16 A. Yes.

17 Q. Now, you had some testimony in response to
18 questions of Mr. Walulik where you acknowledged at
19 some point in time the folks at the Franklin
20 facility ordered a rental boiler.

21 A. Right.

22 Q. Do you know when the order was placed for
23 the rental boiler?

24 A. Not offhand.

25 Q. Is that information you can obtain?

1 A. It would be in the records which I -- which
2 is in here in terms of the ordering date. But I
3 recall that it was within 24 hours or 48 hours or
4 something like that. It wasn't a long period of
5 time.

6 Q. Twenty-four hours or 48 hours of what
7 event?

8 A. Of authorization by CNA to obtain a rental
9 boiler.

10 Q. Is it your testimony that it was not until
11 CNA gave authorization to obtain a rental boiler
12 that Mafcote or the Ohio affiliate ordered that
13 boiler?

14 A. Correct.

15 Q. If the information shows that the boiler
16 was ordered prior to CNA even being notified, how
17 would you explain that?

18 A. I couldn't but, you know, it's possible.
19 I'm not saying that it didn't happen.

20 Q. Do you know the length of time between
21 ordering the boiler and the receiving the boiler,
22 the rental boiler?

23 A. I don't know. Perhaps three days or four
24 days.

25 MR. GREER: If you don't know, don't

1 MR. WALULIK: I'm sorry. Can you read
2 back the last two questions just so I'm clear
3 on what was answered.

4 (Whereupon the record was read by the
5 Court Reporter.)

6 BY MR. MINDLIN:

7 Q. At any time in connection with those
8 discussions with the representatives of Genatt that
9 you mentioned, did any of them suggest to you that
10 the purchases should be made by the Franklin, Ohio
11 facility and not by Royal?

12 A. No.

13 Q. Did that topic come up one way or the
14 other?

15 A. That topic did not come up.

16 Q. To your knowledge did anyone at Mafcote in
17 any conversations with CNA representatives ever
18 indicate that Mafcote did not intend to submit a
19 loss of income claim, only an extra expense claim
20 with respect to this incident?

21 A. I'm afraid that although I've submitted
22 claims before, I really am not an expert in filing
23 claims. We know what a loss is. We told them how
24 we were going to file a loss and what our losses
25 were. I had no objection. We had no objection at